

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

In re JONDRA F. LATHAM
Debtor

§
§

CASE NO. 22-60447
CHAPTER 7

JONDRA F. LATHAM
Plaintiff

§
§

v.

§
§

ADVERSARY NO. 23-06002

PROSPER MARKETPLACE, INC.
Defendant

§
§

MOTION TO ENFORCE OF PROSPER MARKETPLACE, INC.

Defendant, Prosper Marketplace, Inc. (“Prosper”), files this its Motion to Enforce, seeking Court enforcement of a settlement agreed to between the parties in principle, which has not yet been consummated because of the unwarranted and unreasonable refusal of Plaintiff, Jondra F. Latham (“Latham”), to provide a W-9 in order for Prosper to fund the deal. In support, Prosper respectfully states as follows:

1. This adversary proceeding was initiated by Latham, alleging that Prosper violated the bankruptcy automatic stay and/or post-confirmation injunction. Prosper denies liability, and moreover, contests that Latham has suffered any actual damages because of any alleged conduct. In light, however, of the amount in controversy, the costs of defense, and the time and effort involved in litigation, Prosper sought to resolve the case in its early stages.

2. After some spirited discussions back and forth over the amount necessary to close the deal,¹ Prosper provided an offer of settlement on May 10, 2023. This was accepted by Latham

¹ This included an April 27, 2023, Offer of Compromise made by Latham that was not accepted by Prosper and expired on its own terms on May 3, 2023.

shortly thereafter, with counsel affirmatively stating: “We are settled at \$7,500.00.” *See* Exhibit 1.²

3. Following this exchange, Prosper asked Latham to provide a W-9, which is customary – and indeed required³ – in order for Prosper to make a payment over \$600. Latham has refused to provide a W-9, and despite repeated requests, has offered no real explanation for the refusal. It is unclear why Latham would not want the IRS to have a record of receipt of this payment, and in any event, having agreed to a settlement at \$7,500, she should not be permitted to manufacture an unreasonable excuse for not consummating the deal. Attached as Exhibits 2, 3, and 4 are e-mail threads where Prosper worked diligently to try and resolve this issue – including trying to understand better the actual concern – to no avail.

REQUEST FOR RELIEF

Based on the unwarranted refusal of Latham to provide a W-9, Prosper Marketplace, Inc. seeks Court enforcement of the Parties’ May 10, 2023, settlement for \$7,500, including that Latham will provide Prosper with her fully executed W9 form. Prosper further requests all other relief as this Honorable Court deems just and appropriate.

2 The Offer of Compromise referenced in counsel’s acceptance e-mail was the offer that was not accepted and expired on its own terms on May 3, 2023.

3 See, e.g. In re Coppola, 623 B.R. 269, 277 (Bankr. D.N.J. 2020) (in granting Wells Fargo’s motion to enforce an unsigned settlement agreement, the Court held “the Debtor has provided no legal grounds under which this Court may relieve the Bank of its statutory duty to obtain the W-9 Forms needed to generate any required Form 1099 information returns for Debtor, her spouse and her Counsel for the \$20,000 Settlement Payment. Determination of the taxability of those proceeds to the Debtor and her spouse must await further proceedings between the Debtor and IRS”); see also Johnson v. LPL Fin. Servs., 517 F. Supp. 2d 1231, 1236 (S.D. Cal. 2007) (resolving an identical dispute over an unsigned settlement agreement, the court held “when a [settlement] check is made out to only Attorney and the payment is considered gross income to Plaintiff, Defendant is required to provide form 1099s to Attorney and Plaintiff.”)

Respectfully submitted,

BAINS LAW PLLC

By: /s/ Brandon K. Bains

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**ATTORNEY FOR PROSPER
MARKETPLACE, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served upon the following, in accordance with the Federal Rules of Civil Procedure on this the 2ND day of June 2023.

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/s/ Brandon K. Bains

Brandon K. Bains